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FEB 05 2005

SECOND MEMO TO FILE WRAPPER

SERIAL NUMBER 10/805,418

TO: PATENT EXAMINER DENNIS PEDDER, ART GROUP 3612 FAX: 703-872-9306
SUPERVISOR GLENN DAYOAN, ART GROUP 3612
FROM: ROBERT SCHLESINGER, PTO REG.NO.29,852
RE: PATENT APPLICATION SERIAL NUMBER 10/805,418 (VEJNAR).
DATE: FEBRUARY 5, 2005

Dear Sirs,

My Memo to File dated January 3rd should have been dated February 3rd. Please excuse this clerical error. I've had the flu this past week and very little sleep.

As stated in my Memo to file of February 3rd, on February 2nd, I received Examiner Pedder's communication (dated January 31st) regarding my Response to First Office Action in the above-identified case. In his communication, Examiner Pedder stated in item 1 of page 2 that said Response was not fully responsive, due to my presentation of the amended claims. In his communication, Examiner Pedder further stated that since the statutory period now expired on this application, it has become abandoned and that a Notice to that effect will follow.

As stated in my Memo of February 3rd, the Applicant and undersigned did clearly file the Response in good faith and anticipating a favorable action from the Examiner. The Examiner did not make any calls to the undersigned's office or provide the undersigned with

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an opportunity to correct or respond to the Examiner's alleged deficiencies in the Response. Typically when there is a perceived deficiency or lack of compliance in a Response, the Examiner will properly allow the patent practitioner an opportunity to correct or comply with the Examiner's requirements, or to respond. I have seen such courtesy extended to patent practitioners even when the statutory period for the Office Action has expired. And this sort of procedure is not uncommon. I have also seen such matters properly and expeditiously handled with a telephone call from the Examiner and an Examiner's Amendment. There are a variety of ways to handle this sort of matter without resorting to abandonment of the patent application and the Petitions, inquiries, etc., associated with it. Patent prosecution should not be reduced to smoke and mirrors and petty procedural gimmicks to kill a patent application on a technicality.

As I have seen such additional time granted to patent practitioners (both in my own practice and at patent law firms where I have been employed) and after the statutory period for the Office Action has expired, I did persist in inquiring further to several PTO officials (all former Primary Examiners or Supervisors) with considerable knowledge and experience in such matters (e.g., Mr. R, Mr. A, Mr. C, all stating that this was an incorrect and inappropriate action). I was referred to the most authoritative sources at the PTO, the attorneys in legal department -- where these statutes, and rules & regulations are drafted - to report the matter that there was apparently confusion amongst Primary Examiners and their Supervisors regarding this not uncommon aspect of patent prosecution procedure, and that Applicants were having their patent applications abandoned in violation of federal law, and without justification.

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Well, in a nutshell, so to speak, I did speak via telephone with Eugenia ("Gina") Jones, in the PTO's legal department. She is an expert on the rules and regulations governing patent prosecution procedure, and I am informed that it is her department that drafted these rules and regulations at issue. Ms. Jones kindly spent significant time on the matter and heard my account of the facts and stated that (at worst) a Notice of Non-Compliant Amendment should have been sent out, and that the statutory period then starts over again. Ms. Jones then apparently also looked at the digital record of the case and apparently did view and read the Examiners correspondence dated January 31st, and did state that there is no basis to place the case into abandonment. She stated that this is clear and that I may cite, e.g., MPEP 714.03. She also kindly stated that I may also use her name. In further pursuing this matter and at a deeper legal analysis, it reminded me that in such matters where a Notice of Non-Compliant Amendment was received, the statutory time period begins again (as stated above), and one might still extend the period of time to reply, as I recall some partners and associates doing just that in cases over-the-years. There is no legitimate conflict of laws in this matter.

I am requesting that you withdraw your latest and above-identified communication, and your holding of abandonment, and please take action on the patent application that would not cause it to go into abandonment, but allow it to proceed expeditiously.

I hope you understand and appreciate my persistence in this matter. Thank you for your consideration.

Respectfully submitted,



Robert Schlesinger, PTO Reg. No. 29,852

P.4

Robert Schlesinger

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Phone: (909)-980-9540

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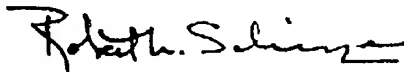
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